

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of Daniel Jay Kunz,
individually, and d/b/a Dan Kunz
Construction

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter came on for a prehearing conference before Administrative Law Judge Eric L. Lipman on February 2, 2007, at the Office of Administrative Hearings in Minneapolis.

Michael J. Tostengard, Assistant Attorney General, 445 Minnesota Street, Suite 1200, St. Paul, Minnesota, 55101-2130, appeared on behalf of the Minnesota Department of Labor and Industry (Department). There was no appearance by, or on behalf, of Daniel Jay Kunz, individually, and d/b/a Dan Kunz Construction (Respondent), 54546 – 237th Avenue, West Concord, MN 55985. The hearing record closed on February 2, 2007.

STATEMENT OF THE ISSUES

1. Whether the Respondent engaged in unlicensed building contractor, remodeler, or roofing activities in violation of Minn. Stat. §§ 326.84, subs. 1 and 1b and 326.842 (2006)?
2. Whether the Respondent, by continuing to engage in unlicensed activity, violated the terms of the November 3, 2005 Cease and Desist Order?
3. Whether it is appropriate to take disciplinary action against the residential building contractor license held by the Respondent?

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On December 8, 2006, a Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges (Notice of Hearing) in this matter was mailed to Daniel Jay Kunz, individually, and d/b/a Dan Kunz Construction, 54546 – 237th Avenue, West Concord, MN 55985.^[1] The Notice of Hearing indicated that a Prehearing Conference would be held in this matter on February 2, 2007.^[2]

2. The Notice and Order for Hearing in this matter includes the following statements:

Respondent's failure to appear at the prehearing conference or hearing may result in a finding that Respondent is in default, that the Department's allegations contained in the Statement of Charges may be accepted as true, and that its proposed disciplinary action may be upheld.

....

Under Minn. Stat. § 45.027, subd. 6 (2006), Respondent may be subject to a civil penalty not to exceed \$10,000 per violation upon a final determination that Respondent(s) violated any law, rule or order.^[3]

3. No one appeared at the February 2, 2007, prehearing conference on behalf of Respondent. No prehearing request was made for a continuance, nor did anyone file a Notice of Appearance on behalf of Respondent.

4. The Notice and Order for Hearing alleges that:

- (a) Respondent, Daniel Jay Kunz, is not licensed in any capacity by the Department.
- (b) On November 3, 2005, the Department issued a Cease and Desist Order and Notice of Right to Hearing prohibiting unlicensed residential building contractor activity by the Kunz.
- (c) In September 2006, the Department received copies of building permit applications indicating that Kunz is performing residential building contractor activity in Pine Island, Minnesota, for Vicky Kramer.
- (d) The Department also received a building permit application submitted by Mr. Oraine Bjugan for a re-roofing project which was to be completed by Kunz.

5. The allegations contained in the Notice and Order for Hearing are deemed proven and are incorporated into these Findings by reference.

Based on these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Labor and Industry have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50, 45.027 and 326.91, and Executive Order 193.^[4]

2. Respondent received due, proper and timely notice of the charges against him and of the time and place of the prehearing conference. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

3. Respondent is in default as a result of his failure, without the ALJ's prior consent, to appear at the scheduled prehearing conference.

4. Pursuant to Minn. R. 1400.6000, a contested case may be decided adversely to a party who defaults. On default, the allegations of and the issues set forth in that Notice of and Order for Hearing and Prehearing Conference or other pleadings may be taken as true or deemed proved without further evidence.

5. Based upon the facts set out in the Notice of Hearing, Respondent engaged in unlicensed building contractor, remodeler, or roofing activities in violation of Minn. Stat. §§ 326.84, subds. 1 and 1b and 326.842 (2006).

6. Based upon the facts set out in the Notice of Hearing, Respondent, by continuing to engage in unlicensed activity, violated the terms of the November 3, 2005 Cease and Desist Order.

7. Minn. Stat. § 326.91, subds. 1 (5) and 4 empowers the Commissioner to take disciplinary action against the Respondent, for his violations of agency orders, state statute and state rules.

8. The imposition of a disciplinary action against Respondent is in the public interest.

Based upon these Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

Based upon these Conclusions, the Administrative Law Judge recommends that disciplinary action be taken against Daniel Jay Kunz, individually, and d/b/a Dan Kunz Construction.

Dated: February 8, 2007

/s/ Eric L. Lipman

ERIC L. LIPMAN

Administrative Law Judge

Reported: Taped, One tape
No transcript prepared

NOTICE

This report is a recommendation, not a final decision. The Commissioner of the Minnesota Department of Labor and Industry will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Scott Brener, Commissioner, Department of Labor and Industry, 443 Lafayette Road North, St. Paul, MN 55155-4307, or call the Department at (651) 284-5005, to learn about the procedure for filing exceptions or presenting argument.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law. If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subdivision 2a. In such a case, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

- ^[1] See, Affidavit of Jean-Anne Gates (December 8, 2006).
- ^[2] Notice and Order for Hearing, at 1.
- ^[3] Notice and Order for Hearing, at 3, ¶ 1 and 4, ¶ 10.
- ^[4] See, State of Minnesota Department of Administration Reorganization Order No. 193 (April 4, 2005) ("The responsibilities of the Department of Commerce as set forth in Minnesota Statutes 2004, sections 326.83 through 326.992, and Chapter 327A in relation to Residential Contractors and Remodelers are transferred to the Department of Labor and Industry").